KWONG KUM SUN (S) PTE. LTD

v.

LIAN SOON SIEW & ORS.

COURT OF APPEAL, SINGAPORE
WEE CHONG JIN CJ
TS SINNATHURAY J
AP RAJAH J
[CIVIL APPEAL NO. 83 OF 1982]
10 JANUARY 1984

CONTRACT: *Claim for work done and materials supplied - Counter claim - Additional costs - Damages paid.*

The appellants claimed for the sum of $11,835.01 for work done and glass materials supplied to the respondents, the main contractors for Housing & Development Board (HDB) project. The respondents counterclaimed for the sum of $9,011.00 for the additional costs paid to another contractor to complete the work and the sum of $104,370.00 being liquidated damages paid by the respondents to the HDB. The respondents were awarded the sum of $73,479.89. The appellants appealed.

Held:

[1] There was a binding contract between the parties. By the letter (dated 15 April 1976) written by the appellants the parties had concluded an agreement.

[2] The appellants were in breach of the contract.

[3] There was no reason to interfere with the assessment of damages.

[Appeal dismissed.]

Other sources referred:
Halsbury's Laws of England, 4th ed. vol. 9 p. 139 para. 261

For the appellants - Tan Jing Quee;
For the respondents - Edmund Nathan

JUDGMENT

TS Sinnathuray J:

The appeal arose from a claim by the appellants for the sum of $11,835.01 for work done and glass materials supplied to the respondents the main contractors for an Housing & Development Board ("HDB") project at Jalan Eunos. The respondents counterclaimed for the sum of $9,011.00 for the additional costs paid to another contractor to complete the works and the sum of $104,370.00 being liquidated damages paid by the respondents to the HDB. Lai J gave judgment for the respondents against the appellants for the sum of $73,479.89 and costs. At the conclusion of the hearing of the appeal, we dismissed the appeal with costs. We now give our reasons:-

On 13 March 1976, the HDB awarded a contract to the respondents, a firm of building contractors, to build eight blocks of single storey workshops, an electrical substation and two transformer rooms at Jalan Eunos. The respondents agreed to complete the project on 8 February 1977 unless extensions were granted by the HDB.

On 15 April 1976, the appellants, a company carrying on business as importers of glass sheets and engaged as glazing contractors, wrote to the respondents a letter offering to supply and install glass for the project. The respondents on the same day notified their confirmation and acceptance of the letter on the letter itself. A ground of appeal was that the learned Judge had wrongly held that the letter had created a binding contract between the parties when on the evidence he should have found that the letter was an invitation to treat. It is therefore necessary to set out the letter in full. It reads as follows:

Our Ref: KKS/SLH/Q/0125/76

15 April, 1976
Messrs Suan Lian Huat Construction
248-B, Geylang Road
Singapore 14

Dear Sir,

Re: 8 Blocks Single Storey Workshops (74 Units) and 2-Electric Sub-Station And Transformer Rooms At Jalan Eunos, Contract I

We thank you for your enquiry and have pleasure in submitting our prices for the supply and fixing of glass to louvres as follows:-

1. 6mm Obscured Wired Glass Fixed To Louvres @ per sq. ft. $0.95

2. 6mm Obscured Wired Glass Fixed to Panels With Putty @ sq. ft. $1.15

We hope that the above prices are acceptable to you and shall be grateful if you will kindly sign and return the duplicate copy of this letter to us for our records.

Yours faithfully,

Kwong Kum Sun (s) Pte Ltd
Glass Division

(Sgd.) Gan Chee Siong
...
Gan Chee Siong
Manager
GCS/bc

We confirm acceptance of the above

Suan Lian Huat Construction

(Sgd.) Lian Soon Siew
...
Signature & Chop

The submission for the appellants was that the letter was vague, it did not contain all the terms of the contract, specifically it did not contain an agreement between the parties as to the quantity of glass to be supplied by the appellants to the respondents, nor did it specify the time as to the delivery and installation of the glass to be supplied. Counsel for the appellants relied on the proposition: "To constitute a binding contract there must be a concluded bargain, and a concluded contract is one which settles everything that is necessary to be settled and leaves nothing to be settled by agreement between the parties.": See *Halsbury's Laws of England*, 4th Edn., Vol. 9, p. 139, para. 261.

We rejected this submission. We were of the view that the law applicable to the facts in this case is the statement, following on the proposition cited by counsel in *Halsbury's*, which is supported by many reported cases (see footnote 2 of para. 261, *supra*) that the general rule

relating to the creation of a binding agreement is that "for the parties to be bound they must have finished reaching an agreement, so that it is possible to infer an intention on the part of both of them to be bound immediately".

Now, as regards intention, it is to be noted that at the trial the appellants' witness, who had secured the contract for the appellants to supply glass to the respondents, said that the letter was "a mutual agreement for the supply and fixing of glass for a particular project at a particular price". He also explained that in this kind of contract it was not a normal practice to give the quantity of glass required.

There was also other evidence relating to the subject of the quantity of glass to be supplied.

On the day when the letter dated 15 April 1976 was written, the appellants had agreed in another letter, on which there was no dispute, to supply to the respondents 2,548 sets of ten blades double control louvres for the project. In the light of this contract for the louvers, there can be no doubt that, as the learned Judge found, the appellants as experienced glass suppliers were aware of the quantity of glass they had to supply under the letter.

Finally, as to when the glass for the project was to be delivered and installed, the same witness for the appellants said that the respondents would inform the appellants as and when the glass was required. Moreover, his evidence was, the appellants' offer was not subject to the availability of glass.

The learned Judge found that the letter was "a contractual document". He must have held that the letter was an offer for the supply and fixing of glass for the project which upon confirmation and acceptance by the respondents had created a binding agreement between the parties. Counsel for the appellants, having referred us to Halsbury's, another way of looking at the case was that on the evidence we have referred to the inference must be that it was the intention on the part of the appellants and the respondents to be bound immediately upon confirmation and acceptance of the letter by the respondents. In our judgment, by the letter the appellants and the respondents had finished reaching an agreement.

Next, it was urged upon us that if there was a concluded contract in the letter, the appellants were not in breach of it. We rejected this submission as it was against the weight of the evidence. The evidence was that when the buildings were ready for the installation of the glass, the appellants were unable to supply the glass. As late as 26 July 1977, the appellants wrote to the solicitors for the respondents that "we have repeatedly informed your clients that there is a shortage of glass panes in the market and we will arrange for the delivery of the same as and when they are available". As this was clearly not a term of the contract, the appellants were in breach of it.

The last ground of appeal was that the damages had been wrongly computed. It was not in dispute that when the final extension given by the HDB expired on 25 July 1977, despite the oral requests and written warnings by the respondent's solicitors of the danger of having to pay the HDB liquidated damages, the appellants were unable to supply and install the glass for the buildings. Eventually, on 1 November 1977 the respondents were forced to terminate the contract with the appellants. They employed another contractor to install the glass to two blocks at the additional cost of $9,011.00. And, because of the delay in the installation of the glass the respondents had to pay the HDB $104,370.00.

In his judgment, the learned Judge found that the appellants, as very experienced glass suppliers to HDB contractors, knew that HDB projects had time limits and that the respondents would have to pay liquidated damages to the HDB for delay beyond the

extension period given by the HDB. But he went on to find on the facts that the respondents had not mitigated damages. Accordingly, he held that the appellants were not liable to pay damages to the respondents for the total number of days of delay as determined by the HDB but only for a certain number of days. In assessing the damages in this way, we were of the view that he had taken into account the fact that the appellants were not the contractors for the project and their contract was merely to supply and deliver the glass after substantial completion of the project by the respondents. These being the only complaints made to us against the assessment of damages, we saw no reason to interfere with the assessment.

For all these reasons, the appeal was dismissed with costs.

Also found at [1984] 1 CLJ 201